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Supreme Court Responsiveness: An Analysis of Individual Justice Voting Behavior and the Role of Public Opinion

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This study aims to explain why the Supreme Court responds to public mood by analyzing individual justice liberalism and comparing it to public liberalism between the years of 1953 and 2005. Three theories suggesting why the Court may respond to public opinion are discussed, including the replacement, political adjustment, and the attitude change hypotheses. The argument of using Court reversals to determine the ideology of the Court is presented and implemented. Public reaction to Court decisions is analyzed along with the Court's institutional legitimacy as means to determine the Court's strategic behavior. Ideology, public mood, the parties controlling the House, Senate, and Presidency, and the overall Court mood are used as independent variables to explain the driving force behind changes in individual justices' voting behavior. The study concludes that Court mood is the strongest and most significant factor in changes in judicial voting behavior, while public opinion, ideology, and the parties controlling the other institutions of government explain little to none of the variance. In addition to justice replacement, the aggregate attitude change of justices is determined to be the most likely explanation for the Court's adherence to public opinion.

Introduction

The Supreme Court's role in American society is an essential part of the checks and balances of the United States government. The lifetime tenure of justices frees them from the tyranny of public mood during election seasons and allows them to decide cases on the basis of the law rather than public preferences. In Federalist Paper No. 78, Alexander Hamilton argued that if periodic instead of lifetime appointments were made, the temptation would be too great to consult popularity rather than the Constitution and the laws. In Federalist Paper No. 76, Hamilton also described the Court as "the least dangerous branch" because of its inability to make laws and policies of its own. It is also arguably the least democratic branch because it is the most independent branch. However, despite the Court's immunity from public opinion, due to the process of appointments as opposed to elections, evidence suggests the Court still regularly decides in line with public opinion (Mishler & Sheehan, 1993, 1994, 1996; McGuire & Stimson, 2004). Given these data, public opinion has an influence on the Court, but due to the isolated and secretive nature of the institution, questions remain as to why public opinion holds sway over the Court's decisions. This study aims to fill a gap in previous research by examining individual justices' relationship with the public and the other institutional actors of the government.

Theories of Responsiveness

Three theories are used to explain how the Supreme Court might be affected by public opinion. The Dahl-Funston hypothesis, also known as the "replacement hypothesis" posits that because the president and senators' beliefs and positions are in line with the public mood when elected, their choices for justices are also likely to reflect

that mood. Dahl argues that a president generally gets to appoint two justices for every four years spent in office, which can effectively "tip the balance on the normally divided Court" (Dahl 1957 quoted in Mishler and Sheehan, 1996; p 171). Mishler and Sheehan note that this theory is consistent with the attitudinal model of judicial decision making, which states that justices assume the bench with ideologies and beliefs that typically remain constant throughout their tenure (1996). This provides a difficult hurdle for the replacement hypothesis to explain the Court's adherence to public mood. The attitudinal model does not exhibit itself in the history of the Court. In studying individual justices, this research, along with others (Giles, Blackstone & Vining 2008; Mishler & Sheehan, 1996; Epstein et al., 1998) shows that justices' attitudes do change throughout their tenure. As Mishler and Sheehan state, "it is an oversimplification of theory to hold that attitudes are the only or even necessarily the principal determinant of behavior" (1996; p. 172). Replacement certainly plays a role in the overall ideological change of the Court, but it is not a sufficient explanation for the Court's adherence to public mood. While it is directly observable, especially when justices are replaced by their ideological opposite, the replacement hypothesis fails to account for change that occurs during periods in which the Court is stable in its membership. For this reason, and because some justices do change their ideology during their tenure, other explanations must be sought.

The political adjustment hypothesis is much more direct, as it posits that justices are strategically changing or tweaking their votes in order to appease the public and the two elected branches of the government that must respond to the public. This hypothesis falls within a rational choice model of decision making, as opposed to an attitudinal model. As Epstein and Knight write, rational choice means that justices are considering

their actions amongst other actors, including Congress, the president, the public, and their colleagues, and how these actors might act or react (1998). Political adjustment suggests that justices are concerned with the enforcement of their decisions, and is best summed up by Justice Frankfurter in *Baker v. Carr*. He wrote "The Court's authority – possessed of neither the purse nor the sword – ultimately rests on sustained public confidence in its moral sanction" (1962, quoted in Mishler & Sheehan, 1996; p 173).[1] Political adjustment could also be phrased as the "running scared hypothesis," since justices are theoretically looking over their shoulders in fear that too many decisions out of line with public opinion will result in a loss of power for the Court to the ultimate detriment of constitutional democracy.

The last of the three theories, the "attitude change hypothesis" fills the gap left by the attitudinal model in that it specifically theorizes that a justice's personal ideology might change in time to fit with broad and enduring changes in public opinion. Judges, like any other person in society, are affected by societal norms, even if they are unaware of society's effects on them. As Supreme Court Justice Benjamin Cardozo eloquently phrased it, "[t]he great tides and current which engulf the rest of men do not turn aside in their course and pass the judge by" (quoted in Casillas, Enns & Wohlfarth 2008; p 3).

Theories of Measures

Analysis of the Court's relationship with public mood is best approached by using James Stimson's public mood index as an independent variable. His public mood index is a composition of public opinion on a range of issues, and is relied on by nearly every study of this kind (Giles, Blackstone & Vining, 2008; Casillas, Enns & Wohlfarth, 2008;

[1] This statement of Frankfurter's contradicted a statement he made nearly twenty years earlier in his dissent in *West Virginia Board of Education v. Barnette.* Then, he wrote "The [Supreme] Court has no reason for existence if it merely reflects the pressures of the day" (quoted in Giles, Blackstone, Vining, 2008).

Mishler & Sheehan 1993, 1994, 1996; Norpoth & Segal 1994; McGuire & Stimson 2004; McGuire, Smith & Caldeira, 2004). Stimson's public mood index has two dimensions, but like previous studies, only the first dimension will be used as it is shown to be the best indication of the issues examined in this study (Stimson, 1991; Erikson, Mackuen & Stimson, 2002). With public mood as an independent variable, a dependable measure of the Court's mood is required for a dependent variable. On this note McGuire, Smith and Caldeira put forward the theory that reversals provide a more accurate measure of the Court's ideology (2004).

The reversal hypothesis relies on the idea that lower courts' decisions "center around the Supreme Court's ideal," (McGuire, Smith & Caldeira, 2004; p 5), a concept put forward by Songer, Segal, and Cameron (1994) that states that because lower courts are restricted by *stare decisis*, they make decisions that attempt to reflect policy outlined in Supreme Court precedents. This "vertical *stare decisis*" causes lower court decisions to cluster around the moderate center of the Court's known preferences. Potential litigants estimate their chances of winning given these known preferences, and decide to seek *certiorari* based on those chances. If the Supreme Court is perceived as conservative, more liberal lower court decisions will be considered too liberal for the Court, and more conservative appellants will apply for *certiorari*. In other words, there would be more conservative petitioners making accurate (and inaccurate) estimates as to their likelihood of winning at the Supreme Court level. These accurate estimates become reversals, while the inaccurate estimates become affirmances. McGuire, Smith, and Caldiera write that "as the Court becomes more conservative, there are more liberal policies that will be reversed by the justices and fewer conservative lower court decisions

that they will reject" (2004; p 7). Thus the reversals, or the accurate estimates, reflect where the Court lies ideologically, while the inaccurate estimates portray an incorrect image. Tests of the reversal hypothesis reveal that when using only reversals, the Court appears to be liberal through the Warren Court and then more conservative through the Burger and Rehnquist courts until Clinton's appointments brought it back towards a moderate center. Using only affirmances showed close to the opposite, suggesting that the Warren years were very conservative years for the Court, something widely known to be untrue. The reversal model also explains 82% of the variance in the ideological composition of decisions, where the standard model using both reversals and affirmances only accounted for 70% (McGuire, Smith, & Caldiera, 2004).

McGuire and Stimson (2004) also test the reversal hypothesis. Their data support their hypothesis, showing affirmances with an R squared of .03, reversals with .60 and all cases with .57. The most compelling results of their research show significantly strengthened relationships between court composition/public opinion and the liberalism of court outcomes when using reversals as opposed to all the cases. Given the reversal hypothesis, there is a strong argument that using both affirmances and reversals contaminates models attempting to illustrate the liberalism of Supreme Court decisions and that previous studies of the Court may have underestimated the effect of public opinion (McGuire, Smith & Caldiera 2004:16-17).

There is also an issue with the response time of the Court to public opinion. There are several theories about when a relationship between public opinion and Court decisions is likely to be observed. Mishler and Sheehan (1993) predict a lag in the evidence of a response to public opinion in the Court's decisions because replacing

justices takes time, as does attitude change. According to their theory, justices would only logically respond to enduring shifts of public opinion. Norpoth and Segal criticize the lag theory, stating that "if the Court only acts on change that has endured, their decisions should be influenced by contemporaneous as well as lagged public opinion" (1994; p 712). In reply, Mishler and Sheehan argue that justices may only respond to durable shifts in public opinion, something that contemporaneous opinion has not had time to prove yet. They expand their theory to explain a small impact of public opinion in the first year that will "gradually increase over time before ending or leveling off at some impossible-to-predict future point" (1994; p 718). Their results support this theory, but they also failed to control for reversals, so their results are arguably inaccurate.

Giles, Blackstone, and Vining weigh in with a theory that seeks to explain the meaning of the lag, or lack thereof. They argue that if justices are acting strategically in line with the political adjustment hypothesis, their votes will correlate with public opinion in real-time, since "it is to current public opinion that they must attend" if they want their decisions to be enforced (2008; p 296). However, if justices' attitudes are slowly changing, Giles et al. contend that justices' votes will correlate at a time lag as well. Epstein et al. argue that elites take a longer time to be swayed in their attitudes (1998), thus we can expect to see a time lag anywhere between one and five years if attitude change is the explanation behind the justices' votes. In line with Norpoth and Segal, Giles et al. also suggest that "a linkage without a time lag is consistent with both explanations," in that attitude change will also be affected by contemporaneous public opinion in addition to a lagged measure (2008).

The literature is contested when it comes to controlling for the issue area of the law that is the subject of the Supreme Court's cases. Some are content to conclude that "for time series analysis, combining issue areas is theoretically appropriate," under the assumption that a single liberal-conservative dimension would capture the votes accurately regardless of the issue area (Casillas, Enns & Wohlfarth 2008; p 12). Others are concerned that dividing the votes by issue area would limit the sample size of cases needed to calculate a liberalism score too much. Both of these points, while valid, fail to provide the clearest picture of justices' voting patterns. By aggregating issue areas, an analysis would fail to distinguish if a certain kind of case was more prevalent on a specific year's docket than another kind of law case. This study shows that justices do vote differently, even if only slightly, depending on the issue at hand. For example, if a justice voted conservatively on civil liberties cases but slightly liberal on economic cases, a year with a docket dominated by economic cases would surely provide an inaccurate portrayal of the justice's voting patterns. Controlling for issue area solves this problem.

Individual Justice Theories

Of course, the Court is not a singular entity, but rather an institution made up of nine experienced and intellectual justices. To analyze the Court's response to public opinion exclusively at the macro level is a failure to examine why the Court is following public opinion. To answer this question, the Court must be examined at an individual level. Mishler and Sheehan take on this task, looking at Supreme Court justices in a psychological manner and reasoning that attitudes are affected by both personally held beliefs, the strength of those beliefs, how they are expected to behave, and societal norms (1996). Their hypothesis is that justices with more extreme ideologies will be less likely

to move to the center (public opinion), while justices who are already moderate will be more likely to move one way or the other. They use yearly data from the Supreme Court Data Base from 1953 – 1992, analyzing only justices who served for 12 years or longer. Evaluating the percentage of liberal votes cast by each justice each year, they compare it to Stimson's public mood index from 1991. Their analysis supports their hypothesis, showing "that moderate justices are more consistently responsive to fluctuations in the public mood than either liberal or conservative justices" (1996; p 189).

The Public's Response to the Court

In explaining any theory that Supreme Court justices are "running scared," or acting strategically, the public's opinion of the Court is very important. It would be an excellent reason for justices to adhere to public opinion if the Court lost legitimacy every time it strayed from the prevailing public mood. Gibson, Caldeira, and Spence (April 2003) analyze the public's confidence in the Court,[2] and their loyalty to the institution (whether they would do away with it or not), along with the public's satisfaction with specific policies, and their general satisfaction with policy. They conclude that even people with low confidence in the Court are still unwilling to do away with it, and that "low levels of confidence should certainly *not* be interpreted as indicators of low institutional legitimacy" (Gibson, Caldeira, & Spence, April 2003; p 361). They point to the fact that an overwhelming majority of people with low confidence in the Court say they will still obey Court decisions even when they disagree, but suggest that their survey results could have been influenced by a "heightened awareness" of the Court (their survey was conducted shortly after the 2001 decision of *Bush v. Gore*).

[2] Gibson, Caldeira, and Spence argue that measuring confidence in the Supreme Court is superior to asking the public's confidence in the people running the Supreme Court due to the latter's lack of specificity.

In a different study, Gibson, Caldeira, and Spence focus specifically on Bush v. Gore, and find that the impact of unpopular decisions amongst the public is softened by the Court's institutional legitimacy (October 2003). They further suggest that increased knowledge of the Court makes people more likely to support it as an institution, and that increased case salience exposes people to the "legitimizing symbols" of the rule of law. By providing a juxtaposition of Court deliberation with the partisan fighting that occurred in the election, the attraction of national attention actually bolstered institutional support for the Court in the aftermath of *Bush v. Gore* (Gibson, Caldeira & Spence, October 2003). It is possible that controversial decisions have a compromising effect on these types of studies, because displeased Democrats are canceled out by pleased Republicans. But when controlling for partisanship, Gibson, Caldeira and Spence point out that Democrats' support for the court did *not* decline between 1987 and 2001, even as Republicans and Independents' support increased.

Giles, Blackstone, and Vining (2008) analyze the effect of case salience on specific justices. They identify a case as salient to the public if it appeared on the front page of the *New York Times*. They conclude that public mood does not hold any additional sway over the Court for salient cases than for non-salient cases.

Research Question and Hypothesis

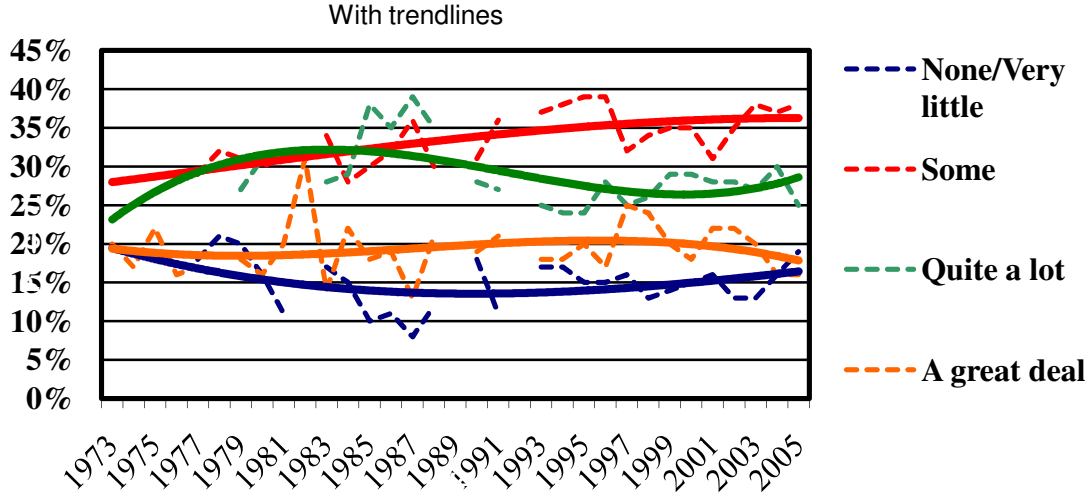
This study seeks to explain the reason behind the Court's apparent adherence to public mood. To examine this, I adopt Mishler and Sheehan's hypothesis that moderate justices are more likely to be swayed by public mood and are the reason for the overall Court's adherence to public mood.[3] To determine the cause of adherence, I assume the

[3] Moderate justices are qualified as such if their average liberalism score during their tenure falls between 40 and 60 percent.

hypothesis of Giles, Blackstone and Vining (2008). If the Court is operating within the political adjustment hypothesis, it will respond to public mood in real-time, along with the individual justices. If justices are being affected by "the great tides and current which engulf the rest of men," i.e. the attitude change hypothesis, then they will correlate with public mood at a time lag and possibly in real-time. Finally, I will take a brief look at the public's reaction to the Supreme Court. Given the findings of Gibson, Caldeira and Spence (April & October 2003), I assert that public confidence will not change significantly over time in reaction to Court decisions, and that any change that does not indicate a loss in the institutional legitimacy of the Court. Therefore, the reaction of the public should be a far concern for justices operating under the political adjustment hypothesis.

In examining the level of public confidence in the Court, data was only available from 1973 to 2005.[4] The results are displayed in Figure 1.

Figure 1 - Public Confidence in the Court



[4] Data obtained from the Roper Center using primarily Gallup, with Harris Poll and General Social Survey filling in the where Gallup data was not available. The question wording was: "Now I am going to read you a list of institutions in American society. Please tell me how much confidence you, yourself, have in each one--a great deal, quite a lot, some, or very little? The U.S. (United States) Supreme Court." All questions were verbatim or the logical equivalent.

It is noteworthy that the level of respondents answering "Some" confidence in the Court increases at a steady rate, while the number of those answering "None/very little" decreases. The other two levels of confidence, "Quite a lot" and "A great deal," fluctuate slightly, but overall, the public shows no discernable reaction to the Court's various decisions, salient or otherwise, between 1973 and 2005. It appears that the Court maintains a high level of confidence. Noting that the majority of respondents answer "Some" or "A great deal" consistently, and that the Court enjoys an extremely high level of institutional legitimacy regardless of the level of confidence that people have in it (Gibson, Caldeira, & Spence, April 2003), this study does not analyze the public's reaction to Court decisions, instead concluding that the Court has little reason to fear a loss of legitimacy in the public's eyes.

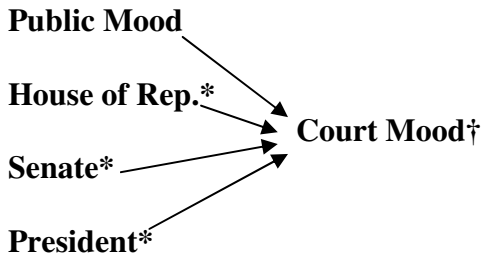
Data and Methods

I examine twenty-two justices between 1953 and 2005 using data from the Supreme Court Database[5]. Justices Fortas, Goldberg, Whittaker, Minton, Vinson, Burton, Jackson, and Reed are excluded from the analysis due to their short tenures of less than seven years after 1953. Because the models for Felix Frankfurter, William Douglas, Antonin Scalia, and Ruth Bader Ginsburg[6] are insignificant in real-time and at all time lags tested, the four justices' results are not reported in the study. The designs for the models used in this analysis are depicted in Figures 2 and 3.

[5] Harold Spaeth's Supreme Court Database is available online at http://scdb.wustl.edu/

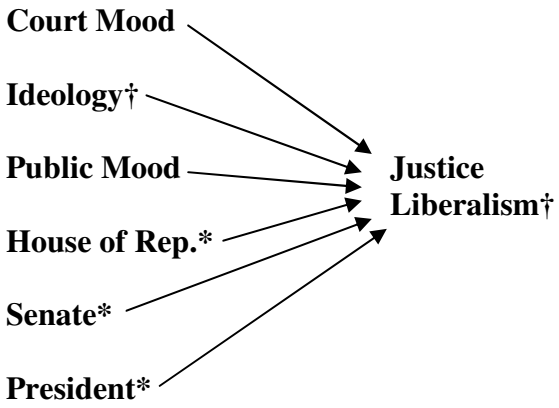
[6] The model for Ruth Bader Ginsburg in the issue area of Criminal Procedure is significant in T+2, but the lack of other issue areas for comparison and the very small number of years to consider render the results unworthy of discussion.

Figure 2 – Court Mood Model



*Indicates controlling party
†Separated by issue

Figure 3 – Individual Justice Model



To create a dependent variable that can be measured against public mood, liberalism scores are calculated for each justice by dividing the total liberal votes in a term by the total votes overall to create a percentage of liberalism that is measured on a 1 to 100 scale. The cases in which the Court reversed the decision of the lower Court are used to calculate the liberalism scores, because reversals provide a better indicator of each justice's mood (McGuire, Smith & Caldeira, 2004). The dependent variable is measuring individual justice voting behavior is identified as "Justice Liberalism" for each particular issue area.

To provide the most accurate measure of a justice's voting behavior, cases are separated by law issue. In line with McGuire and Stimson (2004), cases are separated into three distinct categories for each justice. "Criminal Procedure" cases are in their own category. "Civil Rights," "First Amendment," "Due Process," and "Privacy" are combined into the category of "Civil Liberties." "Unions" and "Economics" are combined into "Economic Activity."

The Supreme Court Database provides the ideological direction of each justice's vote, and cases in which an ideological direction was not discernable are discarded. Cases categorized as judicial power, attorneys, federalism, interstate relations, and federal taxation are not used due to the complexity of coding the ideological direction of votes on these law issue areas. The database codes votes and decisions as liberal if, in criminal procedure, First Amendment, civil rights or due process cases, the vote is pro-individual, pro-affirmative action, pro-female in abortion, or pro-civil liberties, to name a few. In economics or union cases, liberal votes and decisions are pro-union, pro-debtor, anti-business, or pro-consumer, etc. Conservative votes and decisions are coded as the opposites of the liberal votes. Exact lists of coding criteria are found in the Supreme Court Database codebook.

It is still reasonable to assume that justices vote with an ideology, and are mindful of how they have voted on past cases of a similar nature. While the attitudinal model is incorrect in assuming that this ideology stays constant, it would be a mistake to discard the concept of ideology altogether. Therefore, I developed a measure of ideology that captures the average liberalism of the individual justice from the previous three years for each issue area. The variable known as "Ideology" will be measured on a 1 to 100 scale. "Ideology" is different than the dependent variable of justice liberalism in that it measures the average liberalism of votes over the previous three years, while the dependent variable of "Justice Liberalism" is a measure of the liberalism of votes for the current year in question. An average of three years is used because it is long enough to balance out the single years that might be considered an anomaly and short enough that it is still reasonable that a justice's previous votes in that issue are in mind. If justices are

expected to maintain a specific ideology, this variable will remain relatively constant and correlate well with each justice's liberalism scores throughout their tenure. However, if other factors are at play, the impact of ideology will be lessened.

Dummy variables are introduced to test for the effect of the party controlling the United States Senate, House of Representatives, and the party that controlled the Presidency. These three variables are measured as either Republican (0) or Democrat (1). These provide indirect measures of the public mood in the form of the elected representatives. These variables are not lagged, because there is no reasonable expectation that the Court would respond to the Senate, House, or Presidency control during the year before its own ruling. Because the variable for the House of Representatives stays constant between 1953 and 1994, the variable drops out of the models for all but the most recent justices.

The variable of public mood, however, is lagged for some models. Models are run measuring real-time response as well as response to public mood that was lagged from one to five years. "T+1" refers to the time series model where the 1974 public mood was matched up with the 1975 Court and justice liberalism. "T+2" refers to 1973 public mood matched to the 1975 Court and justice liberalism, and so on. Six models are run (one for real-time and five for the time lags) with the dependent variable of Court Mood to determine the likely source of individual justices adhering to public mood. Court Mood is calculated in the same way as justice liberalism, and is measured on a 1 to 100 scale. The results are shown in Tables 1 – 3. The trend that appeared was a strong adherence to public mood in Realtime that diminishes as the time lags increase, losing value both in the R-square of the overall model and in the significance of each issue area.

For this reason, T+3 through T+5 are not included. The data tables showing the results for individual justices from real-time through T+2 are located in Appendices A – C. Table 4 shows the number of significant B coefficients and their level of correlation for each variable. Court Mood was the most significant variable throughout, as well as the strongest.

Table 1 - Court Mood Real-time			
Issue	**Criminal Procedure**	**Civil Liberties**	**Economic Activity**
Model and Independent Variables			
N	50	51	45
Adjusted R-Square	.413	.420	.320
Overall Model Sig.	.000***	.000***	.001***.
Public Mood (Std. Error)	3.354*** (.729)	3.851*** (.774)	2.622*** (.731)
House of Rep. (Std. Error)	4.135 (8.099)	13.484 (9.029)	9.748 (10.993)
Senate (Std. Error)	1.473 (7.635)	-.372 (8.486)	-.674 (8.429)
President (Std. Error)	13.898*◊ (5.848)	12.178 (6.315)	12.237 (6.454)

Table 2 - Court Mood T+1			
Issue	**Criminal Procedure**	**Civil Liberties**	**Economic Activity**
Model and Independent Variables			
N	50	51	45
Adjusted R-Square	.310	.356	.195
Overall Model Sig.	.000***	.000***	.012**
Public Mood (Std. Error)	2.811** (.836)	3.598*** (.856)	1.746* (.809)
House of Rep. (Std. Error)	5.564 (8.779)	13.803 (9.514)	8.925 (11.957)
Senate (Std. Error)	.061 (8.885)	-5.146 (9.257)	1.984 (9.574)
President (Std. Error)	12.118 (6.402)	9.399 (6.723)	10.458 (7.090)

Table 3 - Court Mood T+2			
Issue	**Criminal Procedure**	**Civil Liberties**	**Economic Activity**
Model and Independent Variables			
N	50	51	45
Adjusted R-Square	.180	.256	.101
Overall Model Sig.	.012**	.001***	.086†
Public Mood (Std. Error)	1.374 (.933)	2.854** (.945)	†
House of Rep. (Std. Error)	4.512 (9.883)	16.387 (10.238)	†
Senate (Std. Error)	8.662 (10.342)	-4.700 (10.524)	†
President (Std. Error)	12.489 (7.292)	6.753 (7.500)	†

* p<.05, **p<.01, ***p<.001

†Multiple Regression model insignificant

‡ Variable B coefficients measured with linear regression; Standard Error measured with F-Test.

◊When the President is a Democrat (i.e. one unit increase in the dummy variable), we expect a 13.898 point increase in Court liberalism

Court mood, Ideology, and Public Mood are measured on a 1 to 100 scale

House of Representatives, Senate, and President are measured on a 0 to 1 scale.

Table 4 - Number of Significant B Coefficients for Individual Justices and Level of Correlation					
		Level of Correlation			
		Negative	Weak	Moderate	Strong
Real-time	Court Mood	0	2	12	15
	Ideology	6	0	2	3
	Public Mood	3	0	0	5
	House of Rep	1	1	0	0
	Senate	1	4	0	0
	President	0	3	1	0
T+1	Court Mood	0	1	18	16
	Ideology	4	0	4	3
	Public Mood	1	0	0	4
	House of Rep	0	0	0	0
	Senate	1	2	0	0
	President	1	4	1	0
T+2	Court Mood	0	1	14	16
	Ideology	2	0	2	3
	Public Mood	1	0	0	4
	House of Rep	0	0	0	0
	Senate	1	1	0	0
	President	0	4	0	0

"Negative" denotes negative correlation
"Weak" denotes correlation of less than 30% of unit size
"Moderate" denotes correlation of less than 75% of unit size
"Strong" denotes correlation of 75% of unit size or higher
Example: B coefficient of .478 for Court Mood indicates that justice liberalism would go up 47.8% of a single unit (liberalism of 50 would go up to 50.478).

Data Analysis

Real-time

According to the results of the real-time model, only a few justices appear to be following public opinion. Four justices, (Blackmun, Rehnquist, Stevens, and Kennedy) correlate positively with public mood with moderate strength, but only in specific issue areas. Justice Blackmun is by far the most interesting in the results of this study, as he responds to the variables of Public Mood, Court Mood, and President for Criminal Procedure and Economic Activity, and Ideology for Criminal Procedure and Civil Liberties. For every one unit increase in the public mood of the nation, Justice Blackmun's liberalism increases by 3.6 units in Criminal Procedure, and 3.2 units in Economic Activity. His dramatic shift from conservative to liberal during his tenure can, in part, be attributed to the public mood of the nation. Within the issue of Economic Activity, Justice Kennedy displays a similar adherence, correlating most strongly with Court mood, but also strongly with Public Mood. With every unit increase in public mood in Economic Activity, Justice Kennedy's liberalism increases by four units. He also responds significantly to the parties controlling the Senate and Presidency, again suggesting that at least within the issue of Economic Activity, he is also a very responsive justice.

Even though the fact that any of the justices can be found to be correlating with public mood at the individual level is noteworthy, the variance of the issue areas and the lack of a common characteristic between these justices suggest that this result is nothing more than a product of their uniqueness as an individual. All of the justices who correlate positively with public opinion do not qualify as moderate in the issue area in

question.[7] The failure of moderate justices to strongly or consistently correlate with public mood does not allow Mishler and Sheehan's hypothesis to be confirmed.

Ideology is only positively correlated with four of the justices, Black, Blackmun, O'Connor, and Kennedy, and only in specific issue areas. The failure of ideology to explain a lot of the variance of most of the justices' voting patterns, along with the corresponding strength of other variables, suggests that ideology is not the dominating factor in many of the justices' decisions and that many of them are making decisions more in line with a rational choice model.

Court mood is the dominant variable in all of the justices' voting patterns in real-time. The variable measuring the liberalism of the decisions of the Court has weak to heavy levels of correlation for all of the justices in at least one issue area. For eleven of the justices, Court mood was significant in all of the issue areas tested with significant models. That justices are responding most significantly to their colleagues is no surprise. The insulated environment of the Court encourages this, but because Court mood factors in so heavily, these results favor the rational choice model. Justices, rather than being overly concerned with how they have voted on similar issues in the past, are most responsive to the current direction of the Court and their vote as it fits within that framework. It is expected that each justice would correlate at a weak to moderate level considering that they are one of the nine members of the Court, but the R-squared for each model confirms that much more than one ninth of the variance is being explained. Furthermore, an individual justice does not always vote with the majority, and yet several justices correlate at a level higher than a one to one correlation: Warren in Criminal

[7] Justice Blackmun did qualify as moderate in the issue area of Economic Activity, and averaged 39% in Criminal Procedure, but Blackmun is an exception because of his dramatic swing in voting behavior.

Procedure, Powell and O'Connor in Civil Liberties, and Stewart, Burger, and Kennedy in Economic Activity. With so much of the variance being explained, it is surprising that Court mood is often the largest correlation in the models for each individual justice's voting behavior across issue areas.

The variables for the House of Representatives, the Senate, and the Presidency did not display any trend across the justices. Instead, they correlated weakly with only a few different justices only in specific issue areas and with high standard errors at times. Like the results for ideology, these results are indicative of the individuality of justices, but unlike ideology, this points away from a rational choice model, but only somewhat. The failure of these variables to explain a large degree of variance across justices does not rule out the rational choice model, but rather merely suggests that the House, Senate, and Presidency are not the institutions with which the justices are most concerned. Of note are the weak correlations with the variable for the party control of the Presidency for three of the Justices: Clark and Kennedy (Economic Activity), and Blackmun (Criminal Procedure and Economic Activity).

T+1

The time lag is used to test for attitude change that might occur slowly among the justices. Because they are intellectual elites and thus might take a longer time to be affected by societal shifts in mood (Epstein et al., 1998), testing for adherence to public mood at a time lag should show if justice voting behavior fits within the attitude change hypothesis.

Only Justices Blackmun in Criminal Procedure and Economic Activity, Stevens in Criminal Procedure, and Breyer in Civil Liberties correlate positively with public

mood, and all do so at quite a strong level of correlation. However, only Breyer qualifies as voting within the moderate range in Civil Liberties. Once again, the results confirm that any consistent individual adherence to public mood across justices is non-existent. This time, at a time lag of one year, moderate justices are unlikely to be the source of the Court's adherence to public mood.

The variable for Court mood is dominant in explaining the variance of justice's votes in this time lag. It accounts for variance across issue areas, and does so again with weak to strong levels of correlation. Very similar to the real-time models, this suggests that the overall Court's direction is foremost in the mind of the justices.

In T+1, ideology displays positive influence for only six justices, and only in specific issue areas and without a particular pattern across justices. The same can be said for the dummy variables of the House, Senate, and Presidency.

Justice Blackmun stands out again, correlating with all variables except the House (which was constant), the Senate, and Public Mood in Civil Liberties. Continuing as an example of attitude change, Justice Blackmun gives a unique example of an ultra-responsive justice on the Supreme Court.

Once again though, no distinguishable pattern appears of justices, moderate or otherwise, who individually correlate with public mood, even at a time lag of one year. With Court mood again as the dominate factor in this decision making model, a clearer picture begins to form of what is *not* driving most of these justices, and that is public mood.

T+2

The same story plays out over the T+2 model, with Court mood as a dominate factor in most of the justices, and public mood registering with Brennan, Blackmun, Rehnquist, and Stevens in specific issue areas. Ideology fails to correlate with the liberalism of most of the justices, as do the variables of the House, Senate, and Presidency. With the T+2 model, the picture becomes hazier for each justice, with issue areas dropping out due to their insignificance.

Conclusions

The models in this study explain from 37% to 94% of the variance across the justices, with the bulk of them explaining 60% or more. There is still some question as to what influences justices, but this model does a good job at explaining a lot of variance within such a secretive institution. Short of interviewing the justices, this study attempted to create an accurate picture of what is driving each justice, but it does have its shortcomings.

By dividing the issue areas and using only reversals to calculate liberalism scores, this study achieved a degree of accuracy that other studies have failed to do so far. However, the methods used here limited the sample size of cases. In an attempt to be more accurate, it is possible that there is still some noise in the data that only a case-specific study could reduce.

Another limit that plagues these kinds of time series studies is the small number of years that justices spend on the Court. As a result, the N in many of the models is very small. This study makes up for that in part by achieving a high degree of accuracy in the variable for each justice's liberalism, but it would certainly be easier to see trends

develop if each justice stayed for thirty or more years. Nonetheless, this study achieved significance in the majority of the models.

The results of the individual justice models indicate that Court mood is a dominant, even with public mood at a time lag. However, the results of the Court models show that public mood has a strong effect in real-time that fades as time goes on. If few of the justices are correlating with public mood, but the overall Court is, and the Court's mood is the biggest factor in the justice's decision making, it is very possible that the justices only combine in the aggregate to follow public mood.

The Court models suggest attitude change rather than political adjustment because of the time lag results. Political adjustment is still a possibility, but several factors work against it. The salience of cases has no effect on the Court's adherence to public mood (Giles, Blackstone, & Vining, 2008). This study showed that public confidence remains high, and the Court even enjoys institutional legitimacy among those with low confidence in the Court (Gibson, Caldeira, & Spence, April 2003). This study also showed that the other institutions of government have little to no effect on the Court, or on many of the individual justices. All of these factors suggest that the justices do not need to politically adjust to the public. Even if the justices need to strategically position themselves amongst the other institutions of government for their decisions to be enforced, many of them are not doing so, and the Court is not responding as an institution.

There is room to discuss if the justices who are affected by public mood can be said to be numerous enough or in strategic enough positions to be the cause of the Court's adherence to public mood. The best alternative explanation is that there is a small amount of attitude change among most of the justices, and the subsequent strategic

positioning of their votes within their own institution (Court mood) causes them to decide in line with public opinion regularly. As mentioned, the power of aggregation has a very likely role in the Court's adherence to public mood.

These are the findings of this study. There is still room for further exploration of this subject, but the results here go farther than previous research, mostly due to the greater accuracy of the measures used. It is my hope that more exploration will be done, as these studies have enormous implications for the constitutional democracy of the United States. This study has shown that most individual justices are not influenced by the masses, preserving in part the counter-majoritarian nature of the Court. This research has also revealed that on average, the justices are not concerned with the controlling political parties of the other institutions of government, nor is the Court as a whole. The most important factor in the justices' votes is the overall Court's behavior, and it is within this context that further research can explain the Court's relationship with public mood.

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